

MAR 04 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FEDERICO FRANCO-VASQUEZ,

Defendant - Appellant.

No. 07-50568

D.C. No. CR-07-00751-PSG-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Philip S. Gutierrez, District Judge, Presiding

Submitted February 16, 2010\*\*

Before: FERNANDEZ, GOULD and M. SMITH, Circuit Judges.

Federico Franco-Vasquez appeals the sentence imposed following his guilty plea to being an illegal alien found in the United States after deportation in

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 8 U.S.C. § 1326. Franco-Vasquez contends that the district court should not have counted his 2007 conviction for driving under the influence as part of his criminal history because the offense occurred during the commission of the instant offense of illegal reentry after deportation. This argument is foreclosed by *United States v. Cruz-Gramajo*, 570 F.3d 1162 (9th Cir. 2009).

**AFFIRMED.**